

**BUREAU OF AUTOMOTIVE REPAIR**

**INITIAL STATEMENT OF REASONS**

**HEARING DATES:**

August 23 and 25, 2006

**SUBJECT MATTER OF  
PROPOSED REGULATIONS:**

Revised Guidelines for Disciplinary  
Penalties and Terms of Probation

**SECTIONS AFFECTED:**

§ 3395.4 of Title 16, Division 33, Chapter 1,  
Article 12, of the California Code of  
Regulations.

**SPECIFIC PURPOSE OF REGULATORY PROPOSAL:**

The proposed action will update the current *Guidelines for Disciplinary Penalties and Terms of Probation*, [May 1997], adopted by the Bureau of Automotive Repair (BAR or Bureau) and incorporated by reference in Section 3395.4 of the California Code of Regulations (CCR). Several statutes and regulations will be added to the penalty guideline section that were either previously omitted or have been adopted since the last revision of the publication in May 1997. A recommended condition of probation specifically relating to cost reimbursement orders will be added to Section III, Standard Terms and Conditions of Probation. Reference to the issuance of a "Notice of Violation" will be eliminated from the list of factors in aggravation. As a result of these revisions, Section 3395.4 will be amended to incorporate by reference the Bureau's *Guidelines for Disciplinary Penalties and Terms of Probation*, as revised June 2006. Other nonsubstantive editorial, grammatical and technical changes will also be made, both in the guidelines and in Section 3395.4, primarily for clarification purposes.

**FACTUAL BASIS:**

The Bureau of Automotive Repair was established within the California Department of Consumer Affairs in 1972. The Bureau was created by Chapter 1578, Statutes of 1971 (Senate Bill 51, Beilenson), which mandated a statewide consumer protection program for automotive repair.

Through its statewide offices, the Bureau conducts consumer protection services related to automotive repair. Bureau representatives register and regulate automotive repair dealers, accept and mediate auto repair complaints from the public, investigate violations

of the Automotive Repair Act (Business and Professions Code Section 9880, et seq.) and, when appropriate, refer cases to law enforcement authorities for prosecution. Specifically, Section 9889.5 provides the basic statutory authority under which the Bureau may take disciplinary action against its licentiates.

The Bureau's disciplinary guidelines have been in existence for over two decades. They were developed to assist Administrative Law Judges in recommending the most appropriate penalty upon a licensee who has been found to have violated the Bureau's laws and regulations. The guidelines also serve to assist Deputy Attorneys General in fashioning appropriate terms and conditions for stipulated settlement agreements in uncontested cases. Another function of the guidelines is to inform and educate licentiates concerning the potential consequences of illegal activities.

Legislation that went into effect January 1, 1996, (SB 523, Kopp [Ch. 938, Stats. 1995]) required licensing agencies, like BAR, who utilize administrative disciplinary guidelines to adopt those guidelines in regulation in accordance with the Administrative Procedures Act. (See Gvt. Code § 11425.50(e)) In July 1997, the Bureau's adoption of its guidelines, as revised in May 1997, became effective with the approval of Section 3395.4 of the California Code of Regulations by the Office of Administrative Law.

Since the May 1997 revision of the Bureau's *Guidelines for Disciplinary Penalties and Terms of Probation*, several new regulations have been adopted which, if violated by a licentiate, could result in the filing of formal administrative disciplinary actions. These regulations are not included in the penalty section of the guidelines, but should be. There are also other statutes and regulations that were previously omitted from the penalty guidelines that the Bureau now wishes to add.

The majority of the disciplinary orders issued in the Bureau's administrative disciplinary cases include an award for cost reimbursement pursuant to Business and Professions Code section 125.3. However, there has been little or no consistency in these awards with respect to how and when payments are to be made. This makes it confusing for the respondent licensee who must pay; and difficult, time consuming and more costly for the Bureau in collecting the awards. In order to achieve some level of consistency, the Bureau wishes to include in its guidelines a recommended term and condition of probation for orders that include an award of costs pursuant to Business and Professions Code section 125.3.

The Bureau no longer issues Notices of Violation. Therefore, it is not appropriate to list such notices as a factor to be considered in aggravation in a disciplinary case.

#### **Incorporation by Reference:**

The incorporation by reference method was used because it would be impractical and cumbersome to publish the disciplinary guidelines in the CCR. The guidelines are intended to assist administrative law judges, attorneys, licensees, and others involved in

the disciplinary process. The guidelines were developed to establish consistency and impose the most appropriate penalty in administrative disciplinary actions for similar offenses on a statewide basis. They are extensive and have been printed booklet-style. If the guidelines were incorporated into the CCR, it would increase the size of Division 33 and may cause confusion to the user. The guidelines were made available to the public and were posted on the Bureau's Web site.

**Underlying Data:**

None.

**Business Impact:**

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/ testimony:

The proposed action does not increase or decrease the penalties that may be imposed in an administrative disciplinary action. Any "adverse economic impact" would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the Bureau's laws and/or regulations. That potential "adverse economic impact" may be avoided simply by complying with the law.

**Specific Technologies or Equipment:**

This regulation does not mandate the use of specific technologies or equipment.

**Consideration of Alternatives:**

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

No reasonable alternative has been identified or brought to the attention of the Bureau.